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Human Rights Council
Thirty-first session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by Servas International, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02889(E)

Please recycle

One of the greatest challenges of our times

Throughout the year 2015/ 2016 the refugee crisis turned into one of the greatest challenges of our times. As an organization working towards lasting global peace and understanding through host and traveler programs all over the world, Servas International (SI) is deeply concerned about the human rights situation for those people taking the long, dangerous trail into Europe, as well as about the rising xenophobia, racism and divisions related to the crisis. At the same time, it is also crucial to understand the sources of the crisis, as countries have to acknowledge and address their role in fuelling conflicts.

The crisis in numbers

According to the International Organization for Migration (IOM) the number of migrants and refugees reaching Europe has reached 1.011.712 in 2015. The vast majority arrived by sea but about 34,000 made their way over land via Turkey. Winter has not stemmed the flow of people - with 83.201 people reaching Europe by sea since the start of 2016.[1]

The direct routes however are fraught with danger. The dramatic death toll on the Mediterranean was a shocking total of 3770 people in 2015. A number of 410 have already been declared dead/ missing by 12 February 2016[2]. The UNHCR's Chief spokesperson Melissa Fleming said that one in three people arriving in January 2016 were children, as compared to 1 in 10 in September 2015.[3]

The vast majority of migrants arrive in Europe via Greece, 853,650 people arriving in 2015.[4] The huge number of arrivals and the scale of the crisis have put huge pressures on the country. There is virtually no infrastructure to cope with the number of people arriving, leaving local volunteers providing vital assistance.[5]

Findings by Servas volunteers

To help manage the influx of people arriving on the Greek Islands, civil society organizations and hundreds of individual volunteers have stepped in, including local residents. Several Servas volunteers from different countries have been on the ground in Greece and also at the Macedonian border. They noted that tensions are increasing between Turkey and Greece, struggling to cope with the refugee influx.

Servas volunteers found that especially unofficial camps such as the Moria camp for non-Syrian refugees in Lesbos are in particular need of support. The camp is made up of people with a mix of cultures from so-called non-war-torn countries who are not to be sent for registration to Athens since many of them are considered as economic refugees. Therefore, it takes much longer for those men, women and children to be processed and given the right to move on.

A Syrian camp is nearby, and is a very well-organized, tightly controlled, UN-run facility. For unofficial camps like Moria there is however little to no UN or official organized work being done at this camp. The work is done by very dedicated volunteers from various small relief organizations. Thousands of refugees in this camp are hoping for a chance to a better life and the full enjoyment of their economic, social and cultural rights.

Refugees and international law

The right to life has crucial importance both for individuals and for society as a whole and is the supreme right from which no derogation is permitted even in times of emergencies. Similarly, the principles of equality and non-discrimination are fundamental to international human rights law.

The 1951 Refugee Convention[6] is the key legal document of today's international refugee protection. It recognized the international scope of refugee crises and the need for international cooperation and responsibility sharing among states.

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[1] http://www.iom.int/

[2] http://missingmigrants.iom.int/mediterranean-arrivals-migrants-including-asylum-seekers-top-83000-2016

[3] http://www.unhcr.org/56bdf0f26.html

[4] http://missingmigrants.iom.int/mediterranean-arrivals-migrants-including-asylum-seekers-top-83000-2016

[5] http://www.bbc.com/news/world-europe-24583286

[6] http://www.unhcr-centraleurope.org/pdf/resources/conventions/refugee-convention/1951-refugee-convention-questions-and-answers.html

Although, initially, the 1951 Convention was more or less limited to protecting European refugees in the aftermath of World War II, the 1967 Protocol expanded its scope and removed its geographical and temporal restrictions, turning the Convention into a truly universal instrument, as the problem of displacement has spread around the world.
The 145 States Parties to the Convention should respect their obligations and in particular EU members States should act accordingly and urgently. They must ensure that their response to dangerous boat migration are fully in line both with international law and place a human rights perspective at the center of efforts to respond to the crisis.

Finding safe and legal channels into the EU
In December 2015 the High Commissioner for Refugees, António Guterres, said: "Forced displacement is now profoundly affecting our times. It touches the lives of millions of our fellow human beings .... Never has there been a greater need for tolerance, compassion and solidarity with people who have lost everything."[7]

For Servas, one of the main concerns therefore is the EU asylum policy, forcing people to resort to smugglers and risking their lives in appalling conditions instead of travelling legally to safety. All refugees should be allowed to apply for visas from EU embassies or special centers (like those in Lesbos) from Turkey (or anywhere outside the EU). Those whose application has been rejected should then be promptly informed about the legal status of their application in order to prevent them from taking the dangerous road to Europe by sea. Those others, whose application is approved, should be allowed to travel legally and safely to their destination.
Similar statements have been made by UNHCR's Chief spokesperson Melissa Fleming in February 2016 who said "Within the context of the necessary reduction of dangerous sea arrivals, safe access to seek asylum [...], is a fundamental human right that must be protected and respected",[8] and also by organizations such as Human Rights Watch, which stated that "ways must be found to increase safe and legal channels into the EU, including by implementing generous resettlement programs [...] , and increasing the number of humanitarian visas."[9]

Refugees and racism
Ever since the beginning of the refugee crisis antimigrant sentiments and practices have been on the rise, particularly in Germany, where the number of attacks against asylum centers has tripled within the past year. While Germany now has the largest refugee influx since World War II, already from January to July 2015 over 200 cases where refugees and migrants have been subjected to hate crimes such as arson, vandalism and violence, have been reported.[10]
The political divide over the refugee crisis and the increasingly aggressive rhetoric are of great concern. On 14 October 2015 UNHCR Zeid Ra'ad Al Hussein Zeid warned that the dehumanizing language used by some European politicians has echoes of the 1938 summit before Holocaust and that some European politicians have descended into "xenophobia and in some cases outright racism".[11]

"One wonders what has happened to Europe. Why is there so much amnesia? Why don't they properly distil from their experience that they've been down this road before and it's a very unhappy road if you continue to follow it," Zeid said.
The Durban Declaration has recognized that xenophobia against non-nationals, including migrants, constitutes one of the main sources of contemporary racism and that there are frequent and widespread human rights violations against members of such groups.[12] It is therefore far past time to work on real integrational approaches to the refugee crisis and for the EU to harmonize its asylum policy.

Racism and antimigrant sentiments are in dire opposition to Servas International's goals to facilitate dialogue between nations and promote international understanding. Interaction between human beings must play an essential role in overcoming cultural barriers, as it is also essential to search for integrational approaches to the crisis and provide practical help.

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[7] http://www.unhcr.org/5672c98c34.html
[8] http://www.unhcr.org/56bdf0f26.html
[9] https://www.hrw.org/report/2015/06/19/mediterranean-migration-crisis/why-people-flee-what-eu-should-do
[10] http://speisa.com/modules/articles/index.php/item.1822/violent-attacks-against-immigrants-exploding-in-germany.html
[11] http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=561f4ba55
[12] http://www.un.org/en/letsfightracism/migrants.shtml

Addressing the source of the crisis

Despite promises to rein weapons exports, European governments are still struggling to kick their addiction to war profits. A report released in October 2015 showed that the value of Germany's arms sales leapt to 3.5 billion Euros in the first six months in the past year[13] - compared to 2.2 billion Euros in the first half of 2014. Critics say one doesn't need to look further for the root of the crisis.

It is clear that foreign interests and weapons exports fuel wars, which in turn forces people to flee their countries and to become refugees in the very same countries that sold the weapons. Proactive approaches therefore should include preventing conflicts from happening in the first place. The heart-wrenching refugee crisis unfolding at European borders must lead to a much needed conversation on those factors causing the instability that is driving people from their homes.

Conclusion

The refugee crisis is showing the human cost of war and conflict. Responsibility for solving the crisis and protecting human rights must be extended far beyond politics.

A human rights approach to migration must be found that places the migrant at the center of migration policies. Migrants must be included in relevant national action plans, including the provision of public housing and national strategies to combat racism and xenophobia.

Instead of further contributing to the controversy, Servas International will continue to respond to the crisis by pursuing its peace mission of facilitating the coming together of hosts and travelers of any race, creed, sexual orientation, class/caste or nationality. It will stand strongly against racism, work on integrational approaches and provide humanitarian help.

[13] http://www.dw.com/en/weapons-go-to-conflict-zones-the-money-comes-to-germany/a-18798104

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Human Rights Council
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Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Jubilee Campaign, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Human Rights and Freedom of Religion or Belief in Myanmar

Jubilee Campaign, together with Christian Solidarity Worldwide (CSW), seeks to draw the Council's attention to the domestic human rights and religious freedom situation in Myanmar, officially the Republic of the Union of Myanmar. Despite significant progress in political reform, including the elections in November 2015, there remain serious concerns. Despite political reforms and some improvements in civil and political rights severe human rights violations including the systematic use of rape as a weapon of war, torture, forced labour, forced conscription of child soldiers, and extrajudicial killings continue to be perpetrated, particularly in ethnic areas; political prisoners remain in prison; and religious intolerance has emerged as a grave concern.

Political prisoners

Although Jubilee Campaign welcomes the release of many prisoners during a recent amnesty in Myanmar[1] the continuation of arbitrary arrests is troubling. Just hours after an amnesty was announced in January 2016, in which 102 prisoners were released, including at least 16 prisoners of conscience, peace activist Patrick Kum Jaa Lee was sentenced to six months in prison for "online defamation" after sharing a post on social media in which a person is seen stepping on a photo of Myanmar Army Commander in Chief, Senior General Min Aung Hlaing. [2]

Freedom of religion or belief

A major setback for religious freedom in Myanmar is a package of four laws aimed at the 'protection of race and religion'. Implemented in 2015, these laws focus on restricting religious conversion, inter-faith marriage, monogamy and population control. Under the new legislation anyone wishing to change their religion will be required to apply for permission to an 11-member committee, consisting of officials responsible for religious affairs, immigration, women's affairs and education.

The 'protection of race and religion' laws have been opposed by civil society in Myanmar and the international community, including the UN Special Rapporteur on Human Rights in Myanmar, Yangjee Lee, who highlighted "significant human rights concerns" relating to the legislation on religious conversions and inter-faith marriage which would "legalise discrimination, in particular against religious and ethnic minorities and against women".[3]

The climate of religious intolerance in Myanmar has worsened significantly in recent years, resulting in violations of freedom of religion or belief and of freedom of expression, and violence incited against religious minorities. Htin Lin Oo, a former information officer of the National League for Democracy (NLD), was convicted of religious defamation under Articles 295(a) and 298 of Myanmar's penal code and received a two-year prison sentence, after a speech he made on 23 October 2015 criticising Buddhist extremists for inciting hatred and violence.[4] A Buddhist himself, he argued that the extremist Buddhist nationalists' behaviour, and the religious intolerance spread by groups such as the Ma Ba Tha, was incompatible with the teachings of Buddhism.

Ethnic conflict

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[1] Amnesty International Press Release https://www.amnesty.org/en/latest/news/2016/01/myanmar-prisoner-amnesty-marred-by-outrageous-jailing-of-activist-for-facebook-post/

[2] Amnesty International Press Release https://www.amnesty.org/en/latest/news/2016/01/myanmar-prisoner-amnesty-marred-by-outrageous-jailing-of-activist-for-facebook-post/

[3] Special Rapporteur on Situation of Human Rights in Myanmar's Report, 23 March 2015 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_72_en.doc

[4] CSW, 'Defamation laws suggest decline in freedoms', 17 March 2015 www.csw.org.uk/2015/03/17/news/2518/article.htm

Bringing to an end decades of civil war with Myanmar's ethnic nationalities will be a key challenge facing the new government. The outgoing military-backed government began a ceasefire process, but war continues in northern Myanmar against the Kachin and Shan peoples; the situation in Kachin state is of very serious concern.

In 2011 the Myanmar Army broke a 17-year ceasefire with the Kachin Independence Army (KIA), and launched a new military offensive. In the past three and a half years at least 140,000 civilians have been displaced, 200 villagers attacked and 66 churches destroyed. Rape is used as a weapon of war. The Kachin Women's Association Thailand (KWAT) and Legal Aid Network (LAN) have documented over 70 cases of gang rape, rape, and attempted sexual violence by Myanmar army troops in Kachin and northern Shan states since June 2011.[5]

In January 2015 two Christian women were attacked, gang raped and murdered by Myanmar Army soldiers in a church compound in Kawng Kha village, northern Shan state. Maran Ly Ra, aged 20, and Tangbau Hkawn Nan Tsin, 21, were teachers from Myitkyina and worked with the Kachin Baptist Convention. CSW sources said that villagers nearby heard the girls screaming and when they went to investigate they saw Myanmar Army boot prints and the bloodied bodies of the dead girls. Church members went to the police, but no action has been taken. The KWAT and the LAT's report, *Justice Delayed, Justice Denied*[6] exposes the systematic cover-up, which extended to the highest levels, of the Myanmar Army's involvement in the case.

Military control over the police and judiciary is a key structural barrier to attaining justice in Myanmar. Since provisions of human rights treaties are not incorporated into Myanmar's constitution or laws, and the judiciary system benefits the perpetrators of abuses; intervention by the international community is necessary in order to restore justice. It is essential that perpetrators do not receive immunity from justice for crimes they have committed, and that a political and peaceful solution to the future of the ethnic nationalities in Myanmar is sought. Jubilee Campaign, together with CSW, urges the international community to prioritise this issue and provide expertise to all sides involved, working to secure a genuine peace process involving political dialogue and political settlement.

Persecution of Rohingyas

Since 2012 violence against Muslims throughout the country has erupted periodically, and hate speech is widely used by a movement of extremist Buddhist nationalists to stir up anti-Muslim sentiment. The UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, has expressed concern about the influence of extreme religious nationalist movements in the political process, and the institutionalised discrimination against the Rohingya. Lack of action to tackle hate speech could amount to incitement to hatred against minorities, and discriminatory laws aimed at 'protecting race and religion' are in stark contrast to Myanmar's human rights obligations.

Persecution of the Muslim Rohingyas in Rakhine state is especially severe. The 1982 Citizenship Law stripped the Rohingyas of their citizenship, rendering them stateless. Since violence erupted in Rakhine state in 2012, thousands of Rohingyas have fled the country, risking their lives in boats on the open sea; or are internally displaced, living Internally Displaced Persons (IDP) camps with inadequate aid and denied freedom of movement.

Furthermore, Jubilee Campaign and CSW are concerned that the 2015 general election results will serve to highlight growing ethnic and religious divides in Myanmar. An estimated 20% of the population is believed to have been deliberately disenfranchised during the election: Rohingya Muslims were denied a vote on the basis of their lack of citizenship, while displaced people in the ethnic areas were excluded, and most Muslim candidates disqualified.

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[5] Asian Human Rights Commission (AHRC), 'BURMA: MYANMAR: Justice Delayed, Justice Denied', 22 January 2016 www.humanrights.asia/news/forwarded-news/AHRC-FPR-001-2016

[6] *Justice Delayed, Justice Denied: Seeking truth about sexual violence and war crime case in Burma*, Kachin Women's Association Thailand (KWAT) and Legal Aid Network (LAN) https://drive.google.com/file/d/0B43b0qOPkS0BRU1kYzA1Tkp6VjB2cmYzQ0FUMXlfbnNtb1U0/view

The November 2015 election was won by Myanmar's democracy leader, Aung San Suu Kyi, and her party, the NLD; this was the first openly contested general election in Myanmar since 1990. Nonetheless the process remained inherently flawed as a result of clauses in the 2008 constitution barring Aung San Suu Kyi from the presidency, and guaranteeing the military 25% of the seats in parliament.

Recommendations to the Human Rights Council:

- Urge Myanmar to issue an invitation to the UN Special Rapporteur on freedom of religion or belief to visit Myanmar, to investigate reports of violations of religious freedom.
- Call upon and aid the government of Myanmar to implement recommendations made in successive UN reports on Myanmar's domestic human rights situation;
- Urge the government of Myanmar to declare a nationwide ceasefire and an end to military attacks against ethnic civilians;
- Call for the urgent protection of IDPs, and for the government and army to immediately cease its attacks on Kachin State;
- Urge the government of Myanmar to halt violations of human rights by security forces, including bringing to an end the widespread use of rape as a weapon of war, forced labour, torture and killings;
- Call for the repeal of the 1982 Citizenship Law. A new law on citizenship rights should be founded on the principles of non-discrimination and equality, providing full citizenship for people regardless of their religious affiliation;
- Urge Myanmar to release unconditionally all prisoners of conscience;
- Urge Myanmar to take steps to protect and promote freedom of religion or belief and freedom of expression for all.

Christian Solidarity Worldwide, an NGO without consultative status, also shares the views expressed in this statement.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Protecting the Right to Housing in Mega-Projects

I. Introduction

The right to adequate housing is frequently violated by state actors through the implementation of large-scale development and infrastructure projects, or *mega-projects,* including mining, logging, oil-extraction, and *mega-events*, such as the FIFA World Cup and the Olympics. Those who live in the vicinity of such large-scale projects have very little say on whether these undertakings, supposedly for the utilitarian public benefit, get implemented or not. Any compensation provided to displaced persons is often insufficient and does not adequately cover costs related to relocation. Furthermore, in the context of mega-events, housing conditions for laborers provided in preparation for the event are grossly inadequate. This statement will address the victims of mega-projects, which may include not only those evicted or displaced, but also the workers constructing the projects.

Various regional and international instruments establish international human rights laws that protect the rights to adequate housing, to be free from forced eviction, to information and consultation, and to adequate compensation. The right to adequate housing is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is supported through General Comments No. 4 and 7 on forced evictions, as well as by various resolutions. For example, in 2010, the Human Rights Council passed resolution 13/10 on the right to housing and mega-events. Resolution 13/10 called upon governments to "… assess the impact on the affected population throughout the process…"[1] and to "… explore alternatives to evictions and to undertake any evictions in accordance with the domestic legal framework…"[2] According to the report of the Special Rapporteur on adequate housing, while international human rights obligations "tend to focus more on the role of national level governments," local and subnational governments need to effectuate such obligations for implementation of access to adequate housing to be more effective.[3] One example is the California housing element law. Such a subnational state law is recommended by HRA in locations of mega-projects and events with huge displacement impacts.

This written statement will include comparative examples from Latin America, Qatar, and California. The right to adequate housing must be a prerequisite for the implementation of mega-projects and the hosting of mega-events. Mega-projects, often produced for the preparation of mega-events, impact those who are displaced and evicted as well as those who work on the projects themselves. Subnational and local laws must be tailored such that the right to adequate housing is not compromised.

II. Mega-Project Victims: Displaced Persons & Project Workers

A. Mexico

Displaced and inadequately compensated Mexican urban populations have little specified available recourse when faced with a mega-project in their locale. The only particular domestic avenue for affected populations to consider is *amparo*, a procedural means of injunction designed to protect the fundamental rights preserved in the Constitution, which include the right to property (Art. 27), and in international treaties to which Mexico is a party. As such, if the right to property were to be violated by Mexico through a mega-project or event, it would be presumed that *amparo* could be invoked effectively to halt such activities. While this may relate to recent mega-projects in Mexico City, for example, such as the Metro Line 12 or the Supervía Poniente highway, no identifiable reparations have been evident, particularly as urban "megaprojects" are generally difficult to be considered admissible by the domestic courts and the Inter-American Commission of Human Rights (IACHR) alike. [4] The widespread effects of such projects in a metropolis are often difficult to contain, and consequently, identifiable victims are difficult to ascertain for purposes of standing in both national and international courts.

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[1] Adequate housing as a component of the right to an adequate standard of living in the context of mega-events, A/HRC/RES/13/10, ¶ 3(a) (2010).

[2] *Id.* At ¶ 3(f).

[3] Report of the Special Rapporteur on Adequate Housing, A/HRC/28/62 (2015).

[4] *Metropolitan Nature Preserve v. Panama, Case 11.533*, IACHR (2003).

B. Qatar

Qatar, the host nation selected for FIFA World Cup 2022, has proposed to build nine new stadiums and renovate three in time for the mega-event. Foreign migrant workers, primarily from South Asia, are constructing each of these stadium projects. According to Qatar's Law 14 of 2004, private sector workers are required to have limited hours, receive paid annual leave, receive timely payment of monthly wages, and enjoy protection from health and safety standards.[5] However, authorities fail to enforce this, and through the *kafala* (sponsorship) system, which ties a migrant worker's legal residence and passport possession to his employer, workers are virtually barred from leaving the country without their sponsor's permission. Furthermore, due to unsanitary labor camp conditions and the lack of implementation of safety requirements on the field of work, it has been reported that Nepalese workers in Qatar have been dying at a rate of one per day.[6] The case of Qatar exemplifies: the intersection of mega-projects and mega-events, workers who are denied adequate housing, and the consequences of the absence of enforcement of both domestic and international obligations.

III. National & Subnational Legislative Solutions

A. Chile

In the watershed Inter-American Court case *Claude Reyes v. Chile*, the Chilean State was found internationally responsible for its refusal to provide information related to a forest industrialization project to Marcel Claude Reyes, as well as the lack of an adequate and effective resource to challenge such a decision. The Court ultimately determined that the facts of the case constituted a violation of Article 13 (freedom of thought and expression), thus the petitioners were eligible for reparations. The Court also held that within six months of the judgment, the Chilean State was obligated to provide necessary legislative measures to guarantee the right of access to state-held information, and that it must provide training for public authorities and state agents on this right.

In response, Chile successfully promulgated and published in the Official Gazette the Law No. 20,285 *Ley de Transperencia y Acceso a la Información del Estado*, by which "the Administration is obliged to provide information in the widest practicable matter, excluding only constitutional or legal exceptions."[7] The State also created the Council of Transparency, which punishes violations of this law, and implemented training activities concerning the new law of hundreds of state officials and lawyers. Since the Chilean State fully complied with the judgments, the Court officially closed the case in 2006. In 2008, the Inter-American Commission " . . . applaud[ed] the progress made by the State in the instant case and the spirit of cooperation between the representative of the victims and the State in relation to the reparations ordered by the Court."[8] Hence, Chile's progress is a paradigm of how a nation can take affirmative steps to adjust its domestic legislation in order to comply with its international obligations vis-à-vis mega-project implementation.

B. California, United States of America

California law requires each city and county to adopt a general plan containing seven mandatory elements, one of which is housing. The housing element, required to be updated every eight years, is subject to detailed statutory requirements and mandatory review by the California Department of Housing and Community Development (HCD).[9] The law, first enacted in 1969, is a tool used by the state in anticipation of future housing needs resulting from a projected significant increase in population. Each local government is obligated to demonstrate how it plans to meet existing and projected housing needs of people at all income levels. Each city must show it can accommodate a certain number of very low, low, moderate, and market-rate housing units.[10] If its housing element complies with state law, a city may qualify for various state funds; however, failure to do so opens up a city to potential litigation from housing advocates. Thus, noncompliance is effectively addressed.

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[5] Human Rights Watch, World Report 2014: Qatar.

[6] Pattison, *Revealed: Qatar's World Cup Slaves*, 2013 http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves

[7] *Claude Reyes et al v. Chile*, IACtHR, Case 12.108, p. 5 (2006).

[8] *Id.*, (*Monitoring Compliance with Judgment) (2008*) p. 8.

[9] CA GOV Code Section 65580-65589.8 http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65580-65589.8

[10] *Id.* at 65583 (C)(2).

In line with the 2015 report of the Special Rapporteur on adequate housing, California's law is an example of how subnational governments can direct local governments to guarantee adequate housing for its populations. HRA urges state parties to encourage the implementation of effective bottom-up approaches via subnational governments to guarantee the right to adequate housing, particularly vis-à-vis displaced victims of mega-project production.

III. Recommendations

HRA requests that the HRC:
(1) Recognize the need for national and subnational legislation to ensure the right to adequate housing in context of mega projects and events, including those of evicted or displaced persons and workers;
(2) Urge the Special Rapporteur on the Right to Housing to monitor the topic of mega-projects, including in the context of mega-event preparations, as they relate to the right to adequate housing; and
(3) Urge state party governments to affirmatively protect this right through appropriate domestic legislation.

HRA urges all state parties undergoing preparations for mega-events and mega-projects to take affirmative steps to implement and enforce effective national and subnational legislation to ensure the right to adequate housing.

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Please recycle

The Death Penalty and the Prohibition Against Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

The HRA welcomes the 2015 HRC Resolution 30/5, which urges all States to protect the rights of persons facing death penalty. Certain issues, however, raise questions about the ability of retentionsist States to continue imposing capital punishment without violating the prohibition against torture and cruel, inhuman, and degrading treatment. Such practices are increasingly limited as norms emerge within the international community towards complete abolition.

Conflict Between Death Sentence Practices and International Laws

International Covenant on Civil and Political rights (ICCPR) Article 6 guarantees the Right to Life. That is, every human being has the inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of life. In countries that have not abolished the death penalty, sentences of death may be narrowly imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

The Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or punishment (CAT) defines torture as any act by which severe pain or suffering whether physical or mental is intentionally inflicted upon a person by or through the instigation or consent of a public official acting his official capacity to intimidate, punish or obtain info, among other motives. CAT further prohibits use of torture or cruel, inhuman, or degrading punishment or treatment committed by officials or under authorization and consent as well.

Although there is no complete bar against capital punishment, current State practices have lead to a violation against the universal prohibition against torture and cruel, inhuman or degrading treatment and thus, will be difficult to continue.

Death Row Phenomenon

The death row phenomenon constitutes torture under CAT's definition because it's a condition in which those who await execution suffer from severe mental trauma and physical deterioration while incarcerated. The Special Rapporteur on Torture identifies the circumstances to create the death row phenomenon as to "include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held."[1] This phenomenon has become commonplace in international jurisprudence. Other courts have identified legal authorities for holding these executions invalid.[2]

In the U.S. the conditions of death row phenomenon are amplified due to the combination of circumstances in the American system that produces severe mental trauma, physical suffering, solitary confinement, horrible prison conditions, lack of exposure to the outside. Arguably, the inmates themselves are consequently serving more than just their sentence. It's a death sentence plus life without parole due to the grossly long time served on death row. A U.S. national who was sentenced to death in 1992 has now spent 24 years on death row without even having his first appeal. It took 5 years for the California to appoint counsel, and another 10 years to reconstruct lost transcripts. The Inter-American Commission on Human Rights acknowledged these facts in an admissibility decision in March 2012.[3] Inmate Bobby Moore currently awaits his appeal in a case pending writ of certiorari in the United States Supreme Court. Moore

[1] UN General Assembly, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/67/279, 9 August 2012.

[2] *See* Soering v. The United Kingdom, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989; Pratt and Morgan v. Jamaica, (1993) 4 All E.R. 769; Paul Lallion v. Grenada, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, October 21, 2002.

[3] N.I. Sequoyah, Report No. 42/10, Inter-Am. Commission of H.R., found at: www.cidh.org/annualrep/2010eng/USAD120-07EN.doc

was sentenced to death in 1980 at the age of 20. He has spent over 35 years on death row, fifteen of which were in solitary confinement.[4]

Methods of execution

Most methods of execution have been explicitly deemed as violations of the prohibition against torture, while others are arguably on par with this conflict against international human rights. However, there are no methods of execution that comes close to comporting with international standards of humanity and dignity.[5] By its very act, any form of execution is a violation on the prohibition against torture and cruel, inhuman, degrading treatment and punishments since all executions inflict physical pain and psychological suffering to prisoners awaiting death.[6] The following lists the major forms of execution and some countries that still follow these practices.

- Public Hangings – still carried out by countries such as Iran, Afghanistan, Bangladesh, Iraq, Japan, Sudan, South Sudan, Palestine, and Malaysia.
- Public Beheading – Saudi Arabia is the only country in the world that still uses beheading as a method of execution for death convictions.
- Stoning – practice found in some countries following Sharia Laws.
- Lethal injections – United States, China and Vietnam.
- Electrocution – United States.
- Instances of botched executions.

Death Sentence for non-violent crimes

The legal basis for judicial executions under international law is found in Article 6 of the ICCPR. It states "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime." Arguably, Article 6 and the concept of "most serious crimes" is not meant to create an exception, but rather, it sets a direction towards abolition of the practice altogether by establishing state obligations to progressively restrict its use.[7] ECOSOC Resolution 1984/50 narrowed the scope of death penalty to not exceeding "international crimes with lethal or other extremely grave consequences."[8] The UN Secretary-General's 6th Quinquennial report stated, "offenses should be life threatening, in the sense that this is a very likely consequence of the action."[9] The UN Special Rapporteur on extrajudicial, summary or arbitration executions further defined "most serious crimes" as "cases where it can be shown that there was an intention to kill, which resulted in the loss of life."[10]

In countries like Iran, Saudi Arabia, United Arab Emirates homosexuality is a crime punishable by death. Other countries such as the People's Republic of China, Republic of China, and Thailand all maintain death sentencing for drug related offenses incompatible with international standards as to the definition of most serious crimes.[11]

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[4] Center for Constitutional Rights, found at: https://ccrjustice.org/home/blog/2016/01/20/death-penalty-horrific-here-s-something-makes-it-even-worse

[5] Amnesty International, Methods of Executions, found at: http://www.amnestyusa.org/ourwork/issues/death-penalty/us-scheduled-executions/methods-of-execution

[6] International Bar Association, The Death Penalty under International Law: A background paper on the IBAHRI Resolution on the Abolition of the Death Penalty, May 2008

[7] International Commission against the Death Penalty, The Death Penalty and the "Most Serious Crimes," A country-by-country overview of the death penalty in law and in practice in retentionist states January 2013.

[8] The Economic and Social Council, ECOSOC Resolution 1984/50 *Safeguards guaranteeing protection of the rights of those facing the death penalty*, May 1984.

[9] *Supra* at note 5.

[10] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20, January 2007.

[11] *Supra* at note 5.

Abolition as an Emerging Global Trend that is Customary in Nature

To date, 98 States have abolished the use of death penalty as a sentencing scheme for any and all crimes. Further, 35 States which retained death penalty sentencing for ordinary crimes are considered abolitionist in practice since there have not been any executions within the past 10 years and are believed to have policies or established practice of not carrying out executions. Fifty-eight States still retain the death penalty sentencing for ordinary crimes and do, in fact, carry out such sentencing and execution.[12]

At the moment abolition of death sentencing and execution is not required, however, regional groups have taken steps to move towards abolition. For example, entry into the European Union requires that State themselves formally abolish such sentences.[13] Even within Nations that still retain the practice of capital punishment, like the U.S., many individual states themselves have abolished the sentence.

Recommendations:

Human Rights Advocates urges the HRC to:

- Adopt the Special Rapporteur's definition of the death row phenomenon.
- Request that States which have not yet abolished the death penalty but do not engage in the practice to ratify the Second optional Protocol to the ICCPR that aims towards abolishing capital punishment.
- Request that States which still actively practice capital sentencing and execution to impose a moratorium on sentencing while moving to ensure that sentences are not made arbitrarily, reserved for the most serious crime, with procedures set in place to avoid further violations on the prohibition against torture.
- Urge that all countries party to the ICCPR abide by its provisions, more specifically Articles 6 and 7 to protect the right to life and continue to adhere to the universal prohibition against torture and cruel, inhuman, and degrading treatment as a form of punishment.

[12] Death Penalty Information Center, Abolitionist and Retentionist Countries, available at: http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries

[13] European Union External Action, EU Policy on Death Penalty, available at: http://eeas.europa.eu/human_rights/adp/index_en.htm.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

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Please recycle

The Right to Food Undermined by Threats to Indigenous Peoples' Land Security by REDD+ and Agro-Industrial Practices

I. Introduction

The right to food, as originally established in the Universal Declaration on Human Rights (UDHR)[1], has been expanded upon and codified into countless international and national-level legal instruments. Unfortunately, this widespread acceptance has not shielded the right from routine violations by both state and private actors. In a recent resolution the Human Rights Council, recalling the United Nations Declaration on the Rights of Indigenous Persons (UNDRIP)[2], noted the concern expressed by indigenous peoples regarding obstacles and challenges to securing the right to food and called upon states to take special actions to combat their root causes[3]. Echoing this concern, this statement uses the Reducing Emissions from Deforestation and Forest Degradation (REDD+) Programme[4] established by United Nations Framework Convention on Climate Change, and the agro-industry, as examples to highlight certain government-sponsored and privately-initiated development projects threatening indigenous communities' right to food.

II. Relevant Legal Standards

The right to food is recognized as an element of the right to an adequate standard of living in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which is binding on ratifying states and imposes legal obligations to guarantee the effective enforcement of the agreement at the national level[5]. As evidence of its extensive international acceptance, the right to food can be found in Article 6 of the International Covenant on Civil and Political Rights of 1966 (ICCPR)[6]; Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW)[7]; Article 24(e) and 27 of the Convention on the Rights of the Child of 1989 (CRC)[8], and paragraph 19 of the United Nations Millennium Declaration (2000)[9]. Both UNDRIP (2007) and the 1989 ILO Convention No. 169[10] call on states to respect indigenous lands and territories and proclaims the right of Indigenous Peoples to control their natural resources. Unfortunately, privatization or the granting of concessions by governments to commercial enterprise operations such as plantations frequently destroy their traditional food and agro-ecological systems[11].

III. Concerns

A. REDD+ Projects Can Threaten the Right to Food

In 2007, Parties to the United Nations Framework Convention on Climate Change (UNFCCC) adopted a decision "Reducing emissions from deforestation in developing countries: approaches to stimulate action," often abbreviated as REDD. Recognizing the contributions of deforestation and forest degradation to greenhouse gas emissions, REDD

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[1] *Universal Declaration of Human Rights* (UDHR), UN General Assembly Resolution 217, 10 December 1948.

[2] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Resolution Adopted by the General Assembly, 2 October 2007.

[3] The right to food, A/HRC/RES/28/10, ¶ 21 (2 April 2015).

[4] UN-REDD Programme, http://www.un-redd.org/AboutUN REDDProgramme/tabid/102613/Default.aspx.

[5] *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*, UN General Assembly Treaty Series, vol. 993, 16 December 1966.

[6] *International Covenant on Civil and Political Rights* (ICCPR), UN General Assembly Treaty Series, vol. 999, 16 December 1966.

[7] *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), UN General Assembly Treaty Series, vol. 1249, 18 December 1979.

[8] *Convention on the Rights of the Child* (CRC), UN General Assembly Treaty Series, vol. 1577, 20 November 1989.

[9] *United Nations Millennium Declaration*, Resolution Adopted by the General Assembly, 18 September 2000.

[10] International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169.

[11] *Cultural indicators of Indigenous Peoples' food and agro-ecological systems*, Woodley, Ellen, Paper jointly commissioned by FAO and the International Indian Treaty Council, with support from the Government of Norway, and, indirectly, from the Christensen Fund, 2009

seeks to reduce emissions from those sources. Noting the "urgent need to take further meaningful action" to reduce these emissions, the decision expressly "recognize[es] also that the needs of local and indigenous communities should be addressed" when taking this action[12]. The UNFCCC COP later expanded REDD to REDD+ to include the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks[13]. REDD+ aims to curb forest CO_2 emissions by isolating large portions and prohibiting development. Dense tropical forests store immense amounts of CO_2 and are therefore ideal for REDD+ projects. Inhabited with indigenous communities, these same forests oftentimes serve as means of housing and nourishment, in addition to acting as a binding social fabric. Forest-dwelling indigenous peoples safeguard approximately 80% of the planet's biodiversity within their traditional territories, yet legally have title to less than 11% of these lands[14]. Despite recognition of indigenous peoples' rights in the REDD+ Safeguards[15], REDD+ projects' pressure on indigenous people's right to use and access forest resources can threaten their right to food.

Indonesia, for example, boasts the largest tropical rainforest in all of Asia, and is home to an estimated 50-70 million Indigenous Peoples[16]. Though the nation's REDD+ program is more advanced than most other participating countries, major issues remain, including insecure land tenure; lack of adequate stakeholder participation; and the continued exploitation of forest resources. Recognition of indigenous rights and their level of participation will ultimately determine whether REDD+ policies and activities on indigenous territory will be positive or negative[17]. Land tenure issues in Indonesia are particularly difficult to resolve, and are exacerbated by the fact that the Indonesian government lacks a formal unifying piece of legislation that recognizes indigenous groups[18]. Without such a document, the inclusion of indigenous communities in the REDD+ planning process will be hindered, and they will continue to endure the effects of widespread land tenure insecurity, in turn jeopardizing the right to food of those dependent on their land for food security.

B. Agro-Industrial, Palm Oil Plantation Can Violate The Right to Food

Latin American states are regularly commencing and expanding already-existing palm oil production, sometimes categorized with similar businesses into agro-industrial plantations. For example, Colombia and Guatemala have plans to dramatically increase their palm oil production. Both states are not only members of the treaties and conventions previously mentioned, but Colombia has codified indigenous land rights in its national Constitution[19]. Colombia is the fourth largest producer of palm oil in the world[20], and the biggest producer in Latin America, with Guatemala following behind. National and international investments in Colombia's rapidly expanding palm oil industry have come at the expense of indigenous rights in various regions, including Mapiripan, Meta, Colombia. A recent report by the Environmental Investigation Agency in collaboration with the Colombian NGO La Comisión Intereclesial de Justicia y Paz has chronicled widespread displacement of indigenous communities from their ancestral lands due to expanding palm oil plantations financed by the Italian-owned company Poligrow. The Jiw and Sikuani indigenous communities have been deprived of their traditional hunting and fishing lands, violating their human rights[21], certainly including their right to food. The Jiw report violations of their right to free, prior and informed consultation with Poligrow regarding their traditional lands. Securing the right to food requires that Colombia take certain steps in the recognition of traditional land rights, and secure those indigenous territory rights towards the prevention of additional illicit expansion into indigenous territory, such as the Jiw.

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[12] UNFCCC COP Decision 2/CP.13 (2007).
[13] Id.
[14] *Indigenous Peoples*, The World Bank, 2014, http://www.worldbank.org/en/topic/indigenouspeoples/overview
[15] UNFCCC, Cancun Agreements (LCA), Decision 1/CP.16, 2010, para. 69; appendix I, para. 2.
[16] *Indigenous Peoples and REDD+: A Critical Perspective*, Osborne, Tracy, PhD., Indigenous Peoples' Biocultural Climate Change Assessment Initiative, 2014.
[17] Note by the Secretariat of the Economic and Social Council to the Permanent Forum on Indigenous Issues, E/C.19/2013/7 (5 February 2013).
[18] *Indigenous Peoples and REDD+* (2014).
[19] Constitución Politica de Colombia, [C.P] art 330 (1991).
[20] *Colombia*, Environmental Investigation Agency, http://eia-global.org/campaigns/forests-campaign/latin-america/colombia.
[21] *Oil Palm Plantations in Colombia Expand into Indigenous Territory*, Environmental Investigation Agency, http://eia-global.org/news-media/oil-palm-plantations-in-colombia-expand-into-indigenous-territory.

In Guatemala, agri-businesses promoting palm oil expansion as development and job-creating for rural communities is coming with high costs to the local community's land and food security. The palm industry has transformed land once used for the production of food staples, such as maize, rice and beans, into rows of palm, worsening the country's ongoing hunger crisis, especially for the indigenous communities most reliant on those crops.

IV. Recommendations

A. Regarding REDD+ Projects

Human Rights Advocates (HRA) requests that the Council urge REDD+-participating states to:

i. Promote constructive dialogue with forest-dwelling communities, and help to address REDD+-implications on the right to food;
ii. Adhere to the standards and norms set by international human rights instruments on indigenous peoples' rights, in all stages of REDD+ projects implicating the right to food;
iii. Promote respect and protection of human rights, as reflected in UNFCCC decisions, including the REDD+ safeguards, and their effects on the right to food.

B. Regarding Agro-Industrial Plantations

Human Rights Advocates (HRA) requests that the Council urge States to:

i. Investigate environmentally-destructive private operations to prevent the expansion of practices that violate the right to food and challenge local land rights, and;
ii. Ensure that full legal recognition is given to indigenous communities through policy and land reform initiatives.

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Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

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Please recycle

Prevention of the Use of Children in Armed Conflict

A growing number of minors are being recruited into the violence of internal conflicts such as civil war and gang warfare. Children are being used in the pursuit of power by both governments and criminal organizations. Governments need to be held accountable for the lack of protection provided to children. This statement addresses the ongoing issue of violence against children in the following six countries that have differing forms of ongoing armed conflict, from which the governments have been unable or unwilling to protect children from recruitment, and have thousands of actively-involved children: the Democratic Republic of the Congo, Sudan, South Sudan, Honduras, Guatemala, and El Salvador.

Article 38(2) of the Convention on the Rights of the Child (CRC) provides that "State Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities." In 2002 the Optional Protocol on the Rights of the Child on the involvement of children in armed conflict came into force. It stipulates that State Parties shall take all feasible measures to prevent recruitment or use in hostilities of persons underage of 18, as well as ensure that they are not compulsorily recruited into their armed forces. Furthermore, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Based on HRC's 2015 Resolution 28/19, which addresses the need for government protection of children particularly when armed conflicts are involved, Human Rights Advocates calls attention to the prevalent use of children in armed conflicts in Central America and in the Democratic Republic of the Congo, Sudan and South Sudan, which often are the result of gang activity. Addressing this issue will be a step toward better investment in the CRC.

Central America

In Central America, particularly the Northern Triangle countries of El Salvador, Honduras, and Guatemala, raging gang violence has stopped the advancement of the CRC in its tracks. The upsurge in these internal armed conflicts combined with the lack of protection by the government has left children in these countries vulnerable to violence, particularly the recruitment by gangs. Gang recruitment of minors in the Northern Triangle is a growing issue with thousands of minors actively recruited and participating. A study done of 322 minors from the Northern Triangle, revealed that over one third of them had been recruited to join a gang and a fourth of those were assaulted after refusing.[1]

Gang leaders force children to work for them from as early as age 6, threatening those who refuse with death. Many children have stopped going to school because classrooms have become recruiting grounds leading these countries to have the lowest school attendance rates.[2] The situation more closely resembles that of child soldiers in African countries, where children are forcibly recruited, than a conflict where children are accidental casualties.

In El Salvador 59 percent of boys and 61 percent of girls identified gang threats and violence as a reason for migrating.[3] Since gangs and police target young people, many have stated that El Salvador is "no place for children."[4]

In Honduras, nearly half of the children (48%) said they had experienced serious harm or had been threatened by

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[1] Immigrant Policy Center, *No Childhood Here: Why Central American Children Are Fleeing Their Homes.* (July 1, 2014) available at: immigrationpolicy.org

[2] Women's Refugee Commission, *Humanitarian Protection for Children Fleeing Gang-Based Violence,* 135 America (Jones and Podkul 2012, 10).

[3] Elizabeth Carlson, Anna Marie Gallagher, "Humanitarian Protection for Children Fleeing Gang-Based Violence in the Americas," Journal on Migration and Human Security, (2015).

[4] Elizabeth Kennedy, Immigration Policy Center, *No Childhood Here: Why Central American Children Are Fleeing Their Homes* (July 2014), available at: <http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf>.

organized criminal groups or state actors.[5] In 2013, 1,013 people under 23 were murdered in Honduras, a nation of eight million.[6]

In Guatemala, at least 3,000 youths are involved in street gangs.[7] Forty-seven minors suffered violent deaths nationwide between January and September 2014. Here, 98% of crimes do not result in prosecutions.[8] The recruitment of children into gangs is depriving them of their right to education, health, and a secure environment.[9] The failure of the government who is responsible for the protection of children leaves many children with no choice but to try to escape across the border to the U.S. or to join the armed conflict.[10]

Africa

Africa has taken the use of children in armed conflicts a step further as there is recruitment of children by the national armed forces, not just organized syndicates. The use of child soldiers in the Democratic Republic of Congo has been described as "endemic" by the UN Organization Stabilization Mission in the DRC (MONUSCO). In 2011 it was estimated that there were 30,000 children currently being used in combat.[11] Child recruitment incidents increased significantly in 2012 because of renewed conflict in the east and they remain high.[12] The main perpetrators are armed groups and the national armed forces (FARDC).[13]

Sudan has one of the worst child soldier problems in the world with more than 17,000 child soldiers fighting on the government side or for rebel forces even after 25,000 former child soldiers had been demobilized from rebel groups in Southern Sudan in 2001. About 16,000 children have been recruited by government and rebel forces since the war began in in South Sudan in 2013, according to the United Nations. They are foot soldiers, cooks and cleaners, boys and girls as young as nine. Many were taken from their homes and schools and forced onto the battlefield. By last November, there were 12,000 youths fighting on both sides, according to UNICEF.[14]

Similar to the children in Central America, the children in Africa carry AK-47s and M-16s on the front lines of combat, while serving as human mine detectors, participating in suicide missions, and acting as spies. Also similar to the children suffering from violence in the Northern Triangle countries, the children in Africa are abducted or recruited by force, and often compelled to follow orders under the threat of death. Many children are promised that they are going to attend school, which are actually military training facilities disguised as schools. The facilities, despite being under the direction of the U.N. and international organizations, are where children were brainwashed to become ruthless killers.[15]

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[5] Kandel, William, Congressional Research Service, Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration, July 3, 2014, available at: http://fas.org/sgp/crs/homesec/R43628.pdf [last accessed Jan. 2016].

[6] Robles, Frances, "Fleeing Gangs, Children Head to the U.S. Border," The New York Times (July 9, 2014) available at: http://nyti.ms/1qX0d6p [last accessed Dec. 27, 2015].

[7] U.S. Department of Justice, *Guatemala 2014 Human Rights Report* https://edit.justice.gov/sites/default/files/pages/attachments/2015/06/26/dos-hrr_2014_guatemala.pdf#page=17

[8] Human Rights Watch, World Report 2013: Guatemala (2013)

[9] *Id.*

[10] Id.

[11] Drumbl, Mark A. *Reimagining Child Soldiers in International Law and Policy.* Oxford University Press. (2012).

[12] Child Soldiers International, *Briefing on the recruitment and use of children in the Democratic Republic of the Congo (DRC) to the UN Security Council Working Group on Children and Armed Conflict,* 31 July 2014.

[13] *Id.*

[14] https://www.washingtonpost.com/world/africa/south-sudan-thought-it-had-solved-its-child-soldier-problem-it-hasnt/2015/11/12/dc52fe42-8488-11e5-8bd2-680fff868306_story.html.

[15] "Child Soldiers in the Firing Line." BBC News 8 April 2001. 16 April 2008 <http://news.bbc.co.uk/2/hi/1266534.stm>

The Need for Accountability and Action

These governments are examples of the failure to protect children the way pursuant to their commitments when they ratified the CRC years ago. They have the unequivocal responsibility to make ending this violence a priority regardless of the inherent difficulties.

Holding states accountable to ensure that children are protected from direct hostilities will undoubtedly assist child victims in accessing protection from ongoing violence. It is crucial that states follow HRC's Resolution 28/19 and take effective legislative measures, including sufficient resource allocation, and eliminate all forms of violence against children in all settings.

The use of minors in armed conflict and organized groups violates national and international laws, and is also a gross violation of human rights. Children are often lured into armed conflicts in regions like Latin America and Africa because of poverty, lack of education and employment, and the erosion of other systematic institutions. However, it is the duty of the governments in those countries to protect their children the way they promised to when they each ratified the CRC.

Recommendations

Human Rights Advocates urges:

1. The Human Rights Council:
   a. To set up a mechanism to enforce its guidelines to ensure its recommendations under paragraphs 38, 39, and 41of Resolution 28/19 are being complied with.
   b. To request that the Security Council include in its resolutions the responsibility of governments to protect children from internal conflicts including gang recruitment.
   c. To request that the Security Council impose a comprehensive arms embargo on the DRC, South Sudan, Sudan, Guatemala, Honduras, and El Salvador and create a body to monitor and report on the implementation of the embargo.
2. State Parties:
   a. To cease military aid to Central American, Congolese, South Sudanese, and Sudanese security forces and other government agencies that provide impunity for widespread violence against children.
   b. Calling on all nations to ratify the CRC.

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Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

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Children's and human rights need to be respected in the scope of administrative actions in Germany

The German government has opened the borders for more than one million refugees – and has earned a lot of respect regarding its dealing with refugees and asylum seekers,
many of whom are in need of protection and assistance.

At the same time, Society for Threatened Peoples would like to point out that it is extremely irresponsible to deport children and adolescents of refugee families, who were born or raised in Germany, to countries they have never seen before. We are especially concerned about members of the Roma, Ashkali and the Balkan-Egyptians from Kosovo who fled to Germany in the 1990s.

Due to the armed conflicts of 1998/1999, about 150,000 Roma, Ashkali and Balkan-Egyptians were forced to seek (temporary) refuge in Germany and other Western European countries. Hundreds of members of these minority groups were abducted, tortured or murdered – and many of them drowned in the Adriatic. Around 35,000 found temporary protection in Germany.

In 2009, the federal and state governments started to deport more and more refugees from Kosovo who were still living in Germany. According to estimates, there are still about 4,400 members of the Roma, Ashkali and the Balkan-Egyptians living in Germany, together with their children. So far, they were tolerated – but are now obliged to leave the country. Even though some of these refugees have been living in Germany for more than 15 years, several initiatives to allow them to stay in Germany have failed. Even against the background of German history, such plans did not find a majority in parliament – nor support from the federal government.

Although the European Court of Human Rights (ECHR) decided that Art. 8 ECHR protects those who have their roots in Germany and who do not feel connected to their alleged country of origin at all, several attempts to prevent deportations based on Art. 8 EHCR (the right to private and family life) have failed in court proceedings.

As the government is clearly obliged to protect minors, deportations of children who were tolerated here for several years are to be seen as violations of Art. 1 para. 1 sentence 2 of the German constitution.

Even if it argued that the German authorities and courts have the duty act in the children's best interest, thereby complying with the constitutional obligation to render balanced and justified decisions, the German authorities are disrespecting the Convention on the Rights of the Child. According to Art. 3 paragraph 1 of this convention, the child's welfare must have priority in administrative actions.

As – according to the courts – the refugee children share the fate of their parents, it is especially problematic that the current legal situation does not provide for an independent right of residence in cases where a child of under 14 years of age attends a school in Germany regularly. If the parents are unable to make a living by themselves and are, thus, dependent on social welfare benefits, they are not integrated into the German society (in an economic sense), and their requests for legal protection and a right to stay are dismissed. Thus, children have no chance to be granted a permanent right to stay. Although the German courts have acknowledged that the situation in Kosovo is difficult – and have also acknowledged the discrimination – they argue that this is not enough to rule out deportations.

From the viewpoint of the STP, this is inhumane and irresponsible: The only thing the children know about the country their parents came from are their troubling reports about having to flee from war and persecution, about intolerable discrimination and misery. The only place these children and adolescents feel attached to is Germany.

In a study that was published in November 2015, entitled "Lost in Transition", the Society for Threatened Peoples (STP) was able to show that the Roma are exposed to severe discrimination in Kosovo, meaning returnees cannot live there. It is almost impossible for them to find jobs or a home; they have no access to vocational training, and the health care situation is extremely bad – so most of them are forced to leave the country and head back to Western Europe. This is a vicious circle that promises a bleak future, especially the children.

Link to the study: http://assets.gfbv.ch/downloads/kosovobericht_low_doppelseiten_online.pdf
Without questioning, Roma from Kosovo are also labeled as poverty refugees, although many of them were in acute danger due to "ethnic cleansing" after the war, although they had to flee from discrimination and exclusion from society – and despite the fact that their poverty is due to their ethnicity and due to the attempts of the government of Kosovo to drive them out of the country.

Now, 23 years after Germany ratified the Convention on the Rights of the Child (and since there are no more reservations since 2010) it is time that the rights of all children are fully respected. Also, the observance of children's and human rights must become a guiding principle of administrative action.

Society for Threatened Peoples recommends:

- Germany must stop deporting Roma, Ashkali and Balkan-Egyptians to Kosovo!
- Above all, Germany should grant a right to permanent stay for children who attend a school in Germany and who often only speak German, not Albanian or Serbian!
- The asylum authorities in Germany must take into consideration that, according to the European Court of Human Rights (ECHR), inhumane and discriminatory treatment of a population group is a violation of paragraph 3 of the European Convention on Human Rights!
- Germany and the European Union should urge the government of Kosovo (and provide financial assistance as well as expertise) to ensure a better integration of the three population groups. In particular, there must be improvements concerning housing, job opportunities and education. There must be an end to discrimination! The government must finally respect the relevant laws and programs!
- Germany and the European Union should demand the government of Kosovo government to acknowledge the human rights violations and crimes committed against the Roma, Ashkali and the Balkan-Egyptian communities in the postwar period. Also – as a key prerequisite for integration – those who are responsible must be brought to justice!

United Nations A/HRC/31/NGO/188

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Human Rights Council
Thirty-first session
Agenda item 5
Human rights bodies and mechanisms

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02914(E)

Please recycle

Human Rights situation in the Ukraine

Crimea was illegally annexed by the Russian Federation in March 2014. Shortly afterwards an escalation of events in the Eastern part of Ukraine led to war. The pro-Russian fighters were heavily supported by Russia. Beside vulnerable civilians like women, children and the elderly and sick, minorities as the Roma in the Eastern part of Ukraine are suffering from the effects of war until today and the indigenous Crimean Tatar population is systematically persecuted on Crimea.

Ukrainian Roma communities face regular and systematic discrimination in most areas including access to education, housing services, health care, employment and social services. European Roma Rights Centre research shows most Roma children either graduate illiterate or leave school at an early stage, a high level of unemployment, deplorable living conditions and poor health status. In segregated schools with majority of Roma children the level of teaching is much lower. In media negative reports about Roma linked to crime and poverty dominate the picture. Also, the discrimination against Roma by medical professionals affects the access of Roma women to adequate health care. A majority of Roma women said they faced discrimination and degrading treatment by doctors and other hospital staff, and in some cases in the outright denial of health care treatment.

According to latest estimates during 2014 and 2015 more than 10,000 Roma people have fled from their places of residence in the Eastern part of the country. They are the most vulnerable group among the IDPs in Ukraine as many of them are not even recognized as legal citizens of Ukraine as 40% of all Roma in Ukraine (up to 400,000 Roma people live in Ukraine) have no personal documents. Information of the Roma Women's Fund "Chirikli" organization shows that 25% of the IDP's moved back to the Eastern part of Ukraine in 2015 and the beginning of 2016. They do not know what became of their houses but take the risk as they say: "It is better to live in a war area in my own house, than to live in foreign cities, like a street tramp." This statement clearly shows that the level of anti-Roma sentiments is so high in Ukraine that Roma don't feel safe there. They even return to the volatile regions where they are in great physical danger as the fighting has increased again over the last couple of weeks.

On Crimea the human rights situation has severely deteriorated since the annexation. The indigenous Crimean Tatars suffer most. On February 11th for instance, 11 Crimean Tatars were detained after wide spread searches of Crimean Tatar homes. Enver Bekirov, Emir-Usein Kuku, Vadim Siruk und Muslim Aliev must stay in custody at least until April 8th. All of them are civil society activists, namely Kuku is the representative of a human rights organization and regularly documented human rights violations on Crimea. In addition to these lately arrested persons Achtem Chiygoz, former vice-president of the Crimean Tatar Mejlis, Ali Asanov and Mustafa Degermedzhi are in prison since winter 2015 without trial. Constant interrogations by the secret service FSB, arbitrary searches of homes, schools, mosques, and libraries, severe restrictions of the freedoms of expression, association and peaceful assembly create a climate of fear among the Crimean Tatar population. Numerous members of the Mejils have been interrogated repeatedly and threatened, the only Crimean Tatar TV Station ATR was forced to close down in April 2015, the severe Russian legislation against extremism and terrorism is used to persecute Crimean Tatars. Crimea is still isolated which means that access to Crimea for international institutions and independent experts from OSCE, the UN and the Council of Europe as well as NGOs and journalists is severely restricted.

Society for Threatened Peoples calls on the Human Rights Council

- To support all initiatives for an end to the war in the Eastern part of Ukraine.
- To support the government of Ukraine in the implementation of the "Action Plan Concerning the Implementation of the Strategy for Protection and Integration of Roma National Minority into Ukrainian Society for the Period until 2020 in close cooperation with the Roma organizations active in Ukraine and to empower the Government Commissioner for Ethnic Politics as well as cooperate with the Ukrainian Parliament Commissioner for Human Rights.
- To support all initiatives for establishing a permanent international human rights monitoring mission on Crimea

- To call on the de facto authorities on Crimea to stop harassing the Crimean Tatars. Stop arbitrary searches of homes, schools, libraries, stop the detention of activists and guarantee the full freedoms of expression, association and peaceful assembly for Crimean Tatars.
- To call on the government of the Russian Federation as an occupying power to release the political prisoners Achtem Chiyygoz, Ali Asanov, Mustafa Degermedzhi

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Human rights situations that require the Council's attention

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

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GE.16-03013(E)

Please recycle

Situation of the Oromo in Ethiopia

The Oromo people are one of the indigenous peoples inhabiting the Horn of Africa. Despite their numeric majority, the Oromo people are in a minority-like situation in the country. Their political, economic social and cultural life in Ethiopia has been marked by discrimination and marginalisation. This situation continues unabated in a more harsh and systematic way under the current government ruling in Ethiopia that controls the government apparatus, the army, security, political, economic and judicial systems to quell any dissents under the guise of economic development.

Since the government came to power in May 1991, the Oromo people were subjected to systematic human rights violations in a varied forms. Untold sufferings and systematic repressions in the last 25 years include extrajudicial killings, enforced disappearances, arbitrary detentions, raping and torture. However, the Ethiopian government champions itself for being the fastest growing economy and key ally in the fight against terrorism to hide the crimes it committed against humanity.

The reality on the ground shows that the Oromo are targeted solely on the basis of their ethnicity. As a result, a high number of prison cells in Ethiopia are filled by the Oromos and the main language spoken there is Afan Oromo. At least 300 Oromo peaceful protesters were killed and hundreds were injured from live bullets in the last two years alone. Thousands of Oromo students, teachers, journalists, artists, businessmen, opposition party leaders and members are currently languishing in prisons. Land grabbing negatively affects the livelihood. The forcible eviction of many farmers from small subsistence farming, pastoral and grazing areas has led to extreme poverty.

Forced evictions of the farmers in the name of investment were massively carried out in the surroundings of the cities in Oromia state and Addis Ababa in the past ten years without their consent and compensation. Millions of hectares of arable land was confiscated mainly by agribusinesses from foreign multinational companies and the government cadres and their operatives resulted in the uprooting and destitution of the millions that led in part to further the starvation of the ten millions of peoples in Ethiopia.

Cut flower plantations that expanded within the radius of 80km surrounding Addis Ababa in less than a decade were feeding millions before they changed hand. The establishment of these plantations and the expansion of real estate were the stepping stone to establish the boundary for a special Zone of Oromia which later was to be incorporated in the Addis Ababa Integrated Master Plan or shortly "Master Plan" in 2014. Similarly, Midroc's and Karturi's farms meant for the crop export into their countries of origin; jatropha, castor oil and sugar cane plantations were not established on non-arable *terra nulis* land, but on small subsistence farms whose owners were forcibly evicted without (with small) compensation and security to their livelihood deprived. The Oromo people are deprived of their livelihood and personhood by successive Ethiopian successive governments. As a result of the suffering from oppression, exploitation and persecution, the students staged a peaceful protest for years and the government reaction was heavy- handed.

In early April 2014, the Ethiopian state disclosed a new master plan to swallow the towns and rural areas around Addis Ababa at the expense of forced evictions of estimated 2 million of Oromo farmers from their ancestral lands. It was aimed to expand Addis Ababa by around 2000% from the current 54,000 ha to 1.1 million ha.

The decision was unanimously opposed by Oromo political parties and civic organisations as well as Oromos from all walks of life for several reasons. The plan was unconstitutional, not inclusive and without the consent of the people. Moreover, it was deliberated to destroy the identity, livelihood, culture and language of the Oromo people.

Oppression of Unarmed Oromo Protesters

In May 2014, the Oromo students from different universities, secondary schools and the general public from all over Oromia engaged the Ethiopian government in a peaceful protest to voice their legitimate concerns. Students from different universities and high schools demonstrated in tens of thousands and denounced the plan.

The demonstration that started at Ambo, 100km from the capital, more than 50 civilians were killed by the government security forces that reacted with violent shear force and snipper bullets. In total over 80 unarmed civilians were killed. Several hundreds of unarmed civilians were injured and thousands were arrested. The Ethiopian government shelved the implementation for a while until it issued final version of its master plan in the last quarter of 2015.

On November 12, 2015, students broke protest at the town of Ginchi, 80km from the capital to the West of Addis Ababa, which engulfed all parts of the Oromia state within two weeks.

The Ethiopian Government issued a decree for Oromia to be ruled under martial law from the end of December 2015. Over 50,000 regulars and special army were deployed under the command post led by the Prime Minister, Head of Army, Police and Security Chief to curb the protest which they labelled as the acts of ''witches" and "satanic".

In the last three months of ongoing protests, more than 220 civilians were killed by live bullets from the government security forces. Several thousands were injured from live bullets and over 10,000 students, farmers, teachers, civil servants, singers, journalists, leaders and members of the Oromo opposition party were the targets of killings, torture, severe beatings, rape and mass arrest. Children from age one to old men of the age of 80, pregnant women and mothers, a groom and a mother with her two sons are among those killed.

Recommendations

Society for Threatened Peoples calls on the government of Ethiopia:

- To allow the Oromo people to exercise their fundamental freedom and rights enshrined in the UN International Covenants of Civil and Political Rights and Economic, Social and Cultural Rights (ICCPR and ICESCR), the constitution of Ethiopia and African Commission for Human and People's Rights. They want to be free from marginalization, discrimination and dispossession of their land; they want to protect their political, economic social and cultural rights and exercise their right to self-determination.

Society for Threatened Peoples calls on the Human Rights Council:

- To send its special rapporteurs to Oromia state in Ethiopia to investigate the human rights violations on the ground.
- To call on the Ethiopian government to adhere to international instruments, unconditionally release all peaceful protesters and political prisoners; to stop killing and injuring innocent civilians; to bring the perpetrators to justice and to stop non-inclusive development projects affecting the livelihood of the population.

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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Maarij Foundation for Peace and Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Reflection on the elaboration of plans for job creation and income increasing for the purpose of poverty elimination

Poverty is still a big problem in the world today, as we can see from the numbers. This is in spite of the progress that we see around us. The good news is that in 2010, only 18% of the world's population was living way below the poverty line as compared to 36% in 1990. It's a small victory, but the progress is slow.

"Working on poverty has continued to decrease, but at a slower pace than before the crisis. There are still some 870 million workers living with their families on less than US$2 per person per day, of which nearly 400 million are living in extreme poverty. A further 660 million workers are living just above the poverty line and are at high risk of falling back" (ILO Statement of 17 October 2013, Geneva).

People in poverty face not only finance problems but social as well, as they become subject of discrimination and humiliation. The interconnection of these problems creates additional difficulties. Thus, find the solutions, which lead to full employment in each country, and benefit from interdependence between states and related processes and issues. In this statement we will:

- Examine three groups of countries: developed economies, economies in transition and developing countries[1]– how they deal with poverty and employment, and we will pay a particular attention to the search for possible solutions;

- Consider possible interconnections between above-mentioned solutions, and their results;

- State the problems and processes influence on poverty and employment; and

- make recommendations based on the findings within the described issues.

"There is no established convention for the designation of "developed" ... countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as developed region and Israel as a developed country[2]..."

The developed economies are not exempt from problems of poverty and unemployment, moreover according to the ILO "World of Work Report 2012", poverty levels have not gone down that much in developed economies: poverty rates dropped in 11 of 36 countries, rose in 17 and remained essentially unchanged in 8.

The main problems that cause poverty in developed countries are low wages, youth unemployment, non-income inequalities (especially related to healthcare systems), and inequalities in access to credit for small and medium-sized enterprises. Moreover, continuous influence of the finance crisis is another significant difficulty.

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[1] Classification is as per Statistical annex:
http://www.google.ru/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.un.org%2Fen%2Fdevelopment%2Fdesa%2Fpolicy%2Fwesp%2Fwesp_current%2F2012country_class.pdf&ei=gUdmUv_7EInY4wSCIIGYBQ&usg=AFQjCNGM1q_-vdfWK_qNrLi-HJoQ1y4Qkw&sig2=pcY7wux1a5GXdR17ML4Nrg&bvm=bv.55123115,d.bGE&cad=rjt

[2] United Nations. Standard country or Area Codes for Statistical Use. Series M, No. 49, Rev. 4 (United Nations publication, Sales No. M.98.XVII.9). Available in part at http://unstats.un.org/unsd/methods/m49/m49regin.htm

There is obviously no universal solution for all problems and for all countries, thus we claim for a complex of measures to be taken:

- Cooperation in tackling the issues, including joint researches, projects and actions;
- Best practices examination and adaptation;
- Trends expectation and examination;
- Job places creation for youth in governmental and international projects;
- Review of salaries systems; and
- Review of legal issues regarding small and medium-sized enterprises.

The result of these measures would be finding of new possible strategies of actions to tackle the poverty and unemployment, especially intergeneration poverty; creation of new job places; and possible positive influence to less developed countries through international projects.

"Countries with transition economies (transition countries, transition economies). Countries moving from centrally planned to market-oriented economies. These countries- which include China, Mongolia, Vietnam, former republics of the Soviet Union, and the countries of Central and Eastern Europe- contain about one-third of the world's population."[3]

The main problems that cause poverty in transition economies are unemployment, inflation and lack of states' activities in this regard. Insufficient food and clothing, poor housing, limited access to utilities, poorer health and less access to healthcare, discrimination, and psychological suffering go in association with poverty. Especially vulnerable to poverty are households in remote rural areas, most ethnic minorities, children, women, and single elderly people. A significant issue of poverty in such countries is the long-term poor.

Thus, together with the measures suggested to the developed countries, the economies in transition shall concentrate on social sustainability, improvement of political situation, internal conflicts eradication and improvement of criminal situation. Other possible instruments to tackle the poverty and unemployment are:

- The development of organized social society, and growth of its position in the decision-making process;
- The improved access and quality of education and training; and
- The strengthened !abour market policies.

The complex of such measures will tackle the problems from different corners, including social, economic and political spheres; and will contribute to the relationship strengthening between countries of same and other groups.

Also called a less-developed country: "*A country with lower GDP relative to other countries. Less developed countries are characterized by little industry and sometimes a comparatively high dependence on foreign aid. Less developed countries often undertake programs of development, with greater or lesser interventions on the part of the national*

[3] The World Bank definition: http://www.worldbank.org/depweb/english/beyond/global/glossary.html

governments. They are major borrowers from organizations such as the World Bank. While no strict definition of which countries are less developed exists, most countries that do not belong to the OECD are considered less developed."[4]

While the developing countries leads the world combat with poverty in its dynamic, they are still facing this problem in a huge size. The ILO World of Work Report 2012 "…shows that national poverty rates declined in about three quarters of developing countries, particularly those that put in place significant social policies. On the other hand, poverty rates increased or remained unchanged in 25 of 36 developed economies as labour markets declined and austerity measures took their toll."[5]

The economic growth of the developing countries will contribute to the significant poverty reduction, especially if the income inequality will be tackled too. Another instrument for poverty eradication is improvement of social care systems. In this regard, the developing countries shall carefully exchange and study their best practices, consider the trends and improve their political situation together with giving opportunities for the development of the social society.

The following steps might be taken to eradicate the poverty in developing countries:

- International development projects with foreign governmental and private investments;
- Governmental projects for youth employment;
- Countries' cooperation in this regard, including joint projects and researches;
- Improvement of conditions for small and medium-sized enterprises;
- Methods to eradicate the inequality of income;
- International organizations' researches and finance support; and
- International programs for coverage of poverty in the developing countries, with a significant role of NGOs in such programs.

These measures would tackle the problem from different corners and will involve various stakeholders on regional and international levels.

The poverty and unemployment – being a complex problem with various interconnected factors and stakeholders – require a complex of solutions. Thus, after reviewing the problematic area in three groups of countries and sub-problems, we suggest the following interdependent measures:

1. Increasing and improving communications among developing countries, leading to a greater awareness of common problems and wider access to available knowledge and experience as well as the creation of new knowledge in tackling development problems.

2. Enabling developing countries to achieve a greater degree of participation in international economic activities and to expand international cooperation for development.

[4] Farlex Financial Dictionary: http://financial-dictionary.thefreedictionary.com/developing+country

[5] ILO: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_180704/lang--en/index.htm

3. Creating and strengthening existing technological capacities in the developing countries in order to improve the effectiveness with which such capacities are used and to improve the capacity of developing countries to absorb and adapt technology and skills to meet their specific developmental needs.

4. Strengthening the capacity of developing countries to identify and analyse together their main development issues and formulate the requisite strategies to address them.

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Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Threats to freedom of religion in Malaysia

Malaysia has witnessed a worrying escalation of religious intolerance towards minority faiths. In the light of the current situation, we would like to share the following update with you.

Implementation of hudud law in Kelantan

In 2015, the Kelantan state government passed amendments to the state's Sharia criminal code[1]. Apart from the constitutional issues raised by the implementation of hudud law in place of the standard common law-based criminal justice system, critics and the general public are largely concerned with the imposition of hudud law on non-Muslims and manifestly disproportionate punishments under hudud law[2]. At this juncture, the state government still requires approval by Parliament in order for them to implement hudud law.

Custodial rights in unilateral conversion

Indira Gandhi

In 2009, the Ipoh Syariah High Court gave Muhammad Riduan custody of his son and two daughters after he had – without their mother's knowledge or permission - converted them to Islam. At that time, their daughters were aged 11 and 12 and their son was only 11 months old.
Their mother, Indira Gandhi applied to the (civil) High Court, which quashed the conversion certificates.

On 30 December 2015, the Court of Appeal, in a 2-1 majority decision, overturned the High Court's decision quashing the conversion certificates, stating that the determination of validity of conversion to Islam was under the exclusive jurisdiction of the Syariah Court (Islamic Court) and therefore the civil courts did not have any jurisdiction to decide on conversion matters that involved a custody battle between Muslim and non-Muslim parents.

On 28 January 2016, Indira Gandhi filed her application for leave to appeal against the Court of Appeal's decision.[3]

Deepa

Deepa's case continued in 2015 with the Federal Court granting Deepa's ex-spouse, Izwan Abdullah a stay against an order that he return his six-year-old daughter to his ex-wife. This decision suspended the earlier decision by the Seremban High Court granting custody to Deepa and the recovery order compelling the return of Deepa's son to her.

With this 'conflict' in court orders, the police under the instruction off the inspector general of police refused to take action on the grounds that there were two conflicting court orders.

In the recent appeal to the Federal Court, the court upheld a previous ruling that suggests that a spouse cannot escape legal liability and responsibility by converting into Islam. Unfortunately, the court also overruled the lower court's decision and granted custody of the eight-year-old son to the husband, who had unilaterally converted to Islam.

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[1] 'PAS wants hudud laws for Kelantan: What you need to know about the laws', The Straits Times, <http://www.straitstimes.com/singapore/pas-wants-hudud-laws-for-kelantan-what-you-need-to-know-aboutthe-laws>

[2] 'Concerns over implementation of hudud in Kelantan', the Straits Times, <http://www.straitstimes.com/asia/se-asia/concerns-over-implementation-of-hudud-in-kelantan>

[3] Child conversion case: M. Indira Gandhi files leave to appeal, the Malay Mail Online, <http://www.themalaymailonline.com/malaysia/article/child-conversion-case-m.-indira-ghani-files-leave-to-appeal#sthash.RLornan0.dpuf>

The court based the decision on the best interests of the child as the son had been in his father's custody in recent years. Even so, the concern was that this decision would set a worrying precedent of 'wrestling' away of custodial rights through alternate means.

On a positive note, the Perlis Religious Council issued a landmark fatwa that would give child custody to the parent who is more suitable, irrespective of their faith[4]. While this decision is laudable and would likely offer hope to those affected by it, it remains to be seen whether the religious councils of other states would adopt a similar stance.

Construction of new places of worship

In April 2015, a church in Taman Medan, Petaling Jaya, was forced to take down its cross following protests by a group of local residents[5]. The protesters were subsequently probed under the Peacefully Assembly Act and charged with trespass under the Penal Code. The Home Minister declared the protests seditious although the inspector general of police publicly denied this.

A similar protest occurred in May at Puncak Alam, Kuala Selangor, over the construction of a Hindu temple in a Muslim-majority area.[6]
In both cases, police took minimal action against the protest organisers.

Conversion issues pertaining to minor

Sustained religious harassment pushed 14-year-old G Thiyaggurudeen to attempt suicide. His case highlights the abject lack of adequate protection for those suffering from harassment by religious groups.[7] Despite police report filed relating to the harassment suffered by the victim and his father, no police action was known to be taken against the perpetrators.

In Sarawak, 13-year-old Sabrina Ngumbang alleged that her teachers had attempted to forcibly convert her to Islam without her parent's consent. In an interview, Sabrina stated that her teachers had provided money for her to purchase prayer clothing after a pre-conversion ceremony. A police report was subsequently made against her teacher for alleged converting the girl to Islam without her parents' consent[8]. Despite the publicity received, Datuk Fatimah Abdullah, Minister for Women, Family and Community Development denied that there had been attempts to convert Sabrina to Islam.[9]

As a state-party to the United Nations Convention on the Rights of the Child (UNCRC), it is deplorable that both the Malaysian federal and state governments fail to take adequate action to protect the rights and interests of children.

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[4] 'Non-Muslim parents allowed child custody under new Perlis fatwa, says report', the Malaysian Insider, <http://www.themalaysianinsider.com/malaysia/article/non-muslim-parents-allowed-child-custody-undernew-perlis-fatwa-says-report>

[5] 'Under the Najib Regime: PJ church forced to take down cross as 'locals' protests', Malaysia Chronicle, <http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=496891:under-the-najibregime-pj-church-forced-to-take-down-cross-as-locals-protest&Itemid=2#axzz3kjpJKJ46>

[6] 'Muslim residents protest against planned building of Hindu temple in Kuala Selangor', the Malay Mail Online, <http://www.themalaymailonline.com/malaysia/article/muslim-residents-protest-againstplanned- building-of-hindu-temple-in-kuala>

[7] 'Religious Fanatics who wreck lives', Free Malaysia Today, <http://www.freemalaysiatoday.com/category/opinion/2015/03/13/religious-fanatics-who-wreck-lives/>

[8] 'Sarawak teenager says teachers tried to convert her to Islam', The Malaysian Insider, <http://www.themalaysianinsider.com/malaysia/article/sarawak-teenager-says-teachers-tried-to-convert-herinto-islam1>

[9] 'Tiada proses Islamkan Sabrina: Fatimah', The Borneo Post Online, <http://www.theborneopost.com/2015/03/28/tiada-proses-islamkan-sabrina-fatimah/>

Recommendations

We urge the United Nations to condemn any restrictions imposed by the Malaysian government in relation to freedom of religion in Malaysia and urge the Malaysian government to:

- Promote policies and practices that ensure the rights of every religious group to exercise their faith free from legal, political, or economic restrictions;
- Honour the constitutional right to freedom of religion under the Federal Constitution.
- Take immediate legal action to arrest and charge extremist groups and individuals who harass and incite hatred and violence against others on religious grounds.

Suaram Rakyat Malaysia (Suaram), an NGO without consultative status, also shares the views expressed in this statement.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE.16-03015(E)

Please recycle

Malaysia's crackdown on fundamental liberties and human rights

In 2015 human rights in Malaysia further deteriorated. With the exposure of numerous corruption scandals involving prominent politicians and high ranking government officials, the government of Malaysia responded harshly against critics, whistleblowers and political opponents with draconian and repressive laws to secure the ruling government's political powers and dominance.

Selective Prosecution of Civil Activists and Politicians

Throughout 2015, civil activists conducted a number of anti-corruption campaigns with regard to the highly questionable dealings and transactions that put the spotlight on a government-linked strategic investment body 1MDB and Prime Minister Najib Razak. Activists also campaiged against the implementation of the Goods and Services Ta and the Trans-Pacific Partnership Agreement (TPPA). Activists and participants of these gatherings were often called for questioning and investigated by the police and in some cases arrested and prosecuted.

Section 124 of the Penal Code

The Penal Code (Amendments) Act 2012 came into force on 31 July 2012. The amendment introduced 13 additional clauses to Section 124 of the Penal Code. The amendment included a new crime of "activities detrimental to parliamentary democracy" which was broadly defined as:

"any activity carried out by a person, or a group of persons, or a group, designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means."

While protection of democratic institutions against violence and threats of violence is justifiable, the manner in which the amendment has been used does not reflect this. Politicians opposing the current government such as Khairuddin Abu Hassan were arrested for lodging reports about the 1MDB scandal allegedly involving the prime minister.

Sections 124B and 124C state that anyone who is involved in an "activity detrimental to parliamentary democracy can be imprisoned for a term up to 20 years, while those attempting to do so can be imprisoned up to 15 years".

Section 124D, 124E and 124F of the amendments state that anyone who prints, publicises, sells, issues, circulates, reproduces or possesses, or imports any document or publication detrimental to parliamentary democracy can be imprisoned for a term up to 15 years, 10 years, and five years respectively.

Section 124J of the Act imposes a prison term of 10 years for those who receive such documents but fail to deliver them to the police.[1] Nowhere in the quoted sections is the phrase "...activity detrimental to parliamentary democracy" clearly defined. This ambiguity allows too wide an interpretation of this phrase which could encompass anything perceived by the authorities to be intended to undermine parliamentary democracy, even if it is non-violent or lawful.

The police often use Section 124 of the Penal Code to clamp down on human rights defenders and critics of the government. Some of the cases involving Section 124 of the Penal Code include:

- On 22 July 2015, the owner of The Edge Media Group, Tong Kooi Ong, was investigated by police under Section 124B of the Penal Code for allegedly using falsified documents in their investigative reporting on the 1MDB scandal. The group's publisher and CEO, Ho Kay Tat, was also probed under the same section.[2]
- On 24 July, two opposition members of Parliament, Tony Pua and Rafizi Ramli, were investigated in relation to allegations that they were involved in the tampering and fabrication of documents related to the 1MDB scandal in order to oust Prime Minister Najib.[3]

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[1] Penal Code Amendment Act 92012), Section 124 Penal Code Malaysia Available at [http://www.federalgazette.agc.gov.my/outputaktap/20120622_A1430_BI_Act%20A1430%20BI-penal%20code%20(amendment).pdf]

[2] http://www.themalaymailonline.com/malaysia/article/the-edges-ho-kay-tat-summoned-for-questioning-over-1mdb-reports

- On 31 July, Ambiga Sreenevasan, president of human rights group Hakam, was called in for police questioning under Section 124 for allegedly urging the public to take to the streets to demand Najib's resignation.[4]
- On 26 August, 17 persons, mainly students, were arrested under Section 124B of the Penal Code for staging a sit-in protest outside Parliament. [5]
- On 1 September, seven activists were probed by the police under Section 124C of the Penal Code in relation to the Bersih 4 rally in late August. The rally saw close to 500,000 protesters calling for the resignation of the prime minister and for institutional reforms.[6] They are also being investigated under Section 141 of the Penal Code for unlawful assembly in conjunction with an offence under Section 120 of the Penal Code (criminal conspiracy).
- Five organisers of Bersih 4 in Kota Kinabalu, Sabah were also probed under Section 124B of the Penal Code.[7]

Alarming increase in the use of the Sedition Act to crack down on human rights defenders

With the weakening of its political grasp over the country following the 2013 general election, in which the ruling Barisan Nasional failed to garner the popular vote, the government opted to crackdown against political opponents, critics and civil activists with the Sedition Act 1948.

On 2 September 2014, Dr Azmi Sharom claimed trial to a charge under the Sedition Act 1948 for his comments on the political crisis in Selangor. (If convicted, he faced a maximum fine of RM5,000, or three years jail or both.[8] He was acquitted on 19 February 2016.)

On 17 September 2014, Azmi filed a court application to challenge the constitutionality of Section 4 of the Sedition Act, claiming that it was unconstitutional and violated Article 10 of the Federal Constitution, which guarantees freedom of speech[9]. Unfortuately, on 6 October 2015, the Federal Court maintained that it was constitutional[10].

This decision effectively allowed the prosecution of other civil activists and politicians that were facing prosecution under the Sedition Act 1948 for innocuous statements. Between 2014-2015 at least 78 individuals including activists, cartoonist, politicians, students, journalists and academicians have been investigated or charged under the Sedition Act.[11]

Furthermore, the Home Ministry in its official reply in Parliament recently, indicated that between 2008 and 2015, the government had investigated 409 cases under the Sedition Act. For most part, the Sedition Act 1948 has been used and is still actively used to silence opposition and dissenters by the government.

Apart from Dr Azmi Sharom, others have been charged:

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[3]Malaysiakini, https://www.malaysiakini.com/news/305855

[4]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/bersih-slams-police-for-harassing-ambiga

[5]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/police-abusing-section-124b-of-the-penal-code-says-bar

[6]The Malay Mail Online, Police to question Bersih 4 rally organisers tomorrow, group confirms .http://www.themalaymailonline.com/malaysia/article/police-to-question-bersih-4-rally-organisers-tomorrow-group-confirms

[7]The Malay Mail online, http://www.themalaymailonline.com/malaysia/article/cops-haul-up-5-in-sabah-for-questioning-over-state-bersih-4-rally

[8]See, The Malaysian Insider, Available at <http://www.themalaysianinsider.com/malaysia/article/azmi-sharoms-case-referred-to-federal-court>

[9]The Section 4(1) of the Sedition Act, covers the arrangement of an activity, which would have "a seditious tendency". It likewise covers speech and the printing, publishing and distribution, reproduction or importation of seditious materials. The burden of proof lies on the person who has in their possession articles that are deemed seditious.

[10]See, The Malay Mail Online , Available at http://www.themalaymailonline.com/malaysia/article/federal-court-rules-sedition-act-constitutional-ums-azmi-sharom-to-stand-tr

[11]See, OHCHR, Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E#sthash.HA7VTdcD.dpuf

1. On 3 April 2015, Cartoonist Zunar was charged for nine offences under the Sedition Act. The charges relate to a series of tweets critical of the government that Zunar sent after opposition leader Anwar Ibrahim was jailed on sodomy charges in February 2015.[12]

2. Prosecution of Khalid Ismath under the Sedition Act and the Communication and Multimedia Act 1998 (another law often used against comments made online) for allegedly offending a member of the royal family. He was first denied bail and sent to solitary confinement at Ayer Molek Prison. He was released under interim bail of RM70,000 while the high court reviewed his case. On 11 November, his interim bail was formalised.

3. On 20 October, Opposition MP R Sivarasa was charged under Section 4(1)(b) of Sedition Act for his speech during a #KitaLawan protest rally in March for his comments against the Judiciary in regards to Anwar Ibrahim's case.[13]

These are just a few examples. Aliran maintains a fuller Crackdown Watch on its website aliran.com, listing the scores of people being probed, arrested and charged under the Sedition Act and other oppressive laws in recent years.

Torture under Security Offences (Special Measures) Act 2012 (Sosma)

In December 2015, human rights group Suaram documented 46 Sosma cases. The number documented was a far cry from the actual numbers when the Chief Justice of Malaysia announced that there were 110 new case related to Sosma heard in 2015[14].

Some of the questionable arrests include:

1. Nor Azmi Jalani who was arrested as a part of 'mass' arrests early 2015. He was allegedly tortured and beaten during his 28-day detention period and forced to confess.

2. Khairuddin Abu Hassan and his lawyer Matthias Chang were detained under Sosma for offences under Section 124K and Section 124L of the Penal Code in relation to police reports filed abroad on corruption and financial misappropriation involving high level government officials.[15] Their arrest was the first politically motivated arrest under Sosma. Fortunately, the High Court of Kuala Lumpur ruled that the alleged sabotage of financial institutions did not fall under the purview of Sosma and Part VI of the Penal Code and released both Khairuddin and Matthias on bail.[16]

On 18 January 2016, Suaram released letters from seven Sosma detainees who claimed they were tortured. The letters appear to show a systematic pattern of torture[17] resembling that previously experienceed by Internal Security Act 1960 detainees. The detainees alleged that they were:

- beaten and kicked after being handcuffed and arrested in public despite not resisting arrest
- beaten in the head and abdomen several times by a large group of investigating officers following a refusal to admit to acts that the victim claims he did not commit
- forced to stand in a painful 'half-stand' position - and threated with more beatings if they moved - while statements were being recorded
- forced to strip, crawl around "like a dog", and pick up in the mouth a piece of rubber thrown on a dirty floor.
- forced to make a pronouncement of divorce or subjected to regular threats of harm to wife and children.

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[12]Al Jazeera, http://www.aljazeera.com/news/2015/04/malaysia-cartoonist-charged-sedition-tweets-150403065345610.html

[13]Free Malaysia Today, http://www.freemalaysiatoday.com/category/nation/2015/10/20/sivarasa-charged-under-sedition-act-over-anwars-jailing/

[14]Malay Mail Online, CJ: 110 SOSMA cases in 2015 http://www.themalaymailonline.com/malaysia/article/cj-110-sosma-cases-in-2015

[15]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/lawyer-matthias-chang-arrested-under-sosma

[16]See, SUARAM 2015 Overview Report.

[17]Malaysiakini, https://www.malaysiakini.com/news/327255

The United Nations Human Rights Office for South-East Asia (OHCHR) has called on Malaysian authorities to conduct investigations into allegations of torture by Sosma detainees.

The UN office has also urged the Malaysian government to sign and ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[18]

In the light of the above, we call upon the United Nations:

- to immediately condemn the unacceptable human rights violations presently taking place in Malaysia.
- to call on the Malaysian government to:
    - immediately stop all attempts at intimidation and drop all charges against human rights defenders
    - repeal draconian laws such as the Sedition Act 1948, Security Offences (Special Measures) Act 2012, the Peaceful Assembly Act 2012 and Section 124 Penal Code
    - conduct an independent and immediate investigation into allegations of torture of Sosma detainees
    - allow the UN Special Rapporteur on Human Rights Defenders and Special Rapporteur on Torture to visit Malaysia to carry out an independent inquiry with the full co-operation of the Malaysian government in their investigation.

Suara Rakyat Malaysia (Suaram), an NGO without consultative status, also shares the views expressed in this statement.

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[18]Malaysiakini, Probe Sosma detainees' torture claims, UN tell M'sia ,https://www.malaysiakini.com/news/327854

United Nations A/HRC/31/NGO/193

General Assembly

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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Society for the Protection of Unborn Children (SPUC), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02923(E)

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Protection of the Family

The Society for the Protection of Unborn Children takes note of the Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/31/37 entitled "Protection of the family: contribution of the family to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development".

Resolution 29/22, clearly set out the parameters on which the report was to be considered, i.e. the family is the "natural and fundamental group unit of society and is entitled to protection by society and the state" and that the family is "the natural environment for the growth and wellbeing of all its members."
Resolution 29/22 called in particular for the protection of the family as a fundamental unit of society, recognizing the prior right of parents to educate their children, and called on all nations to create family-sensitive policies and to recognize their binding obligations under treaty to protect the family.

Whilst there are some good and solid recommendations within the report (A/HRC/31/37), which also cites legally binding treaties, it then attempts, duplicitously, to expand the meaning of family to include concepts which have never been accepted by UN member states in any binding treaty.
The duplicity of the report can be seen in that it cites the Universal Declaration of Human Rights and other binding treaty documents, that cannot be interpreted as recognizing same-sex relationships but then in the section that surveys family laws and policies, lists some recent member state legislation making same-sex relationships equivalent to the natural family.

Despite the fact that the Universal Declaration in Article 16. 1, says that 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family, the report claims that family should be understood "in a wide sense". The report also says "There is no definition of the family under international human rights law" and it speaks of the equivalence of "the nuclear family, the extended family, and other traditional and modern community-based arrangements", for purposes of international policy. In its recommendations the report claims that consensus regarding the role of families [...] include the need to recognize the diverse and changing forms of the family institution.

In essence the report clearly attempts to create an opening for the recognition of family structures such as same sex couples which have never been accepted in any binding UN treaty. However, according to the Convention on the Rights of the Child (CRC Art3(1)) the rights of the child are "a primary consideration" not just a consideration. Children have a right to a mother and father and to know their genetic identity. They should not be subject to the physical and psychological risks involved in artificial reproductive technology procedures, donor conception or surrogacy arrangements associated with same-sex partnerships. Rather than seeking to expand the meaning of family, the UN has an obligation to ensure that the rights of children are protected and not made subject to the rights, interests, needs or desires of adults, including same-sex couples wishing to become parents.
The Secretary General emphasized in his report for the International Year of the Family that inclusion of families in the post 2015 agenda would assist in reduction of inequality and contribute to the achievement of the SDGs Regrettably, the critical role of the family in promoting and achieving sustainable development has been overlooked in the formulation of the post 2015 Agenda.
We therefore call upon States not to overlook the fundamental role of the family in society and its contribution to development in the formulation of their own development plans for the implementation of SDGs.

No state or private institution, no country or political system can substitute the actions undertaken by the family, which is and will remain, the most valuable of human institutions. The family fulfills crucial functions for the individual and for society without which society would disintegrate. Functions such as the transmission of life, education and social integration of its members, protection of personal and family health and intergenerational solidarity are all integral to the family.

The institution of the family however needs special protection by public authorities which have an obligation not only to recognize the importance of the family and the role it plays in society, but also have a duty to protect and support measures of a political, economic, cultural, social or legal nature to sustain it.

Policies in support of the family must be based on the conviction that helping the family involves understanding and then meeting its needs based on genuine research rather than ideological propaganda and concepts that do not have international recognition. Economic, social and quality of life conditions have worsened for many families around the world States and international organizations must commit to enact effective parent controlled policies and measures to provide the necessary comprehensive support for the family and its members. For change to occur, family policies must:

- Promote the development of genuine family protection
- Promote active policies that give effective support to the family
- Make the family a political priority.
- Mainstream the family in all actions, policies and programs.
- Recognize and promote family rights in all areas, particularly
    1. the right of parents to marry and found a family,
    2. the right of parents to have the number of children they want,
    3. the right of children to family stability,
    4. the right to reconcile work and family life,
    5. the right of parents to free choice in the education of their children.

Hence, we call upon Member States to

- Create family-friendly policies to support the family, and to assess such policies and programmes for their impact on family well-being;

Family policy limited exclusively to sectoral issues, or for family members as individuals only, results in an incomplete approach to the needs of the family and of its members. Current human rights thinking which places children's rights in conflict with those of their parents and focuses on individualism needs to be urgently reviewed.